Master and Servant—Statutory Liability—Injury to Mine Employee.—The Circuit Court of Appeals for the 4th Circuit in the case of Pocahontas Consol. Collieries Co. *v.* Johnson, 244 Fed. 368, had under consideration Virginia Acts 1912 (Pollard's Code Supp. 1916, p. 824 et seq.) concerning coal mines and the safety of employees therein. With reference to the statute in general it is held that an action for injuries resulting from the breach of a statutory duty may be maintained by any one of a class for whose special benefit a penal statute is enacted; that the failure to display a light on the front of a moving train of cars is the proximate cause of injury to an employee standing on the track waiting for cars to pass on another track; that an employee does not assume the risk of a known violation by his employer of a penal statute requiring a specific appliance deemed necessary by the Legislature for the safety of employees; that the opinion of the mine inspector giving an erroneous construction to the statute would not avail the employer as a defense in a case where only actual damages were claimed.

Special points decided were upon the application of §§ 8 and 13. Section 13 contains a clause providing that: "On all haulways where hauling is done by machinery of any kind, the mine foreman shall provide a proper system of signals and for the carrying of a conspicuous light on the front, and a light or flag on the rear, of every trip or train of cars when in motion, provided that this shall not apply to trips being hauled by gathering motors or mule teams when operating on other than main headings, and when hoisting or lowering men occur before daylight in the morning or at evenings after darkness."

It was contended that a string of loaded cars being pushed by an electric motor within a mine from the point of assembling to a point at the foot of an incline up which they were to be taken by a hoist, did not come within this provision so that the company would be liable for the failure to have a light on the front of the cars. To this the court said: "The accident did not occur while care were being hauled by gathering motors or mule teams at a place other than a main heading, and therefore the defendant's contention that there was no duty to provide a light on the front of the moving cars is without merit. No place in a mine would fall more clearly within the letter of the statute and the protection it was designed to afford than that where the accident occurred. Without artificial light, the place was absolutely dark and there was much movement of cars."

Section 8 provides that: "No person shall travel on foot to and from his work upon any slope, engine plane or motor road when other good roads are provided for that purpose," and the court holds that if an employee entered the mine in violation of this statute there would be ground to say that he was guilty of contributory negligence; citing Southern Ry. Co. *v.* Rice, 115 Va. 235. The employee

in this case, it was alleged, entered the mine through a drift mouth when he should have entered through a manway provided for all employees; but as there was evidence for the jury on the question, of whether or not the roof of the manway was safe, the court could not say that another "good road" was provided and hence that the employee was guilty of contributory negligence. In this connection it was also held that the employee had not gone into the mine to "travel on foot" as there was evidence to show a custom, whether or not authorized and sanctioned by the employer being a question for the jury, of employees going in at this point and riding in on the cars.

Nuisance—Undertaking Establishment.—The Supreme Court of Michigan has held that an injunction would be granted at the suit of property owners against the maintenance of an undertaking establishment, including a morgue, on one of the residence streets of a city. It was conceded that such an establishment is not a nuisance per se, but that it would constitute one under the circumstances and in the locality in question. The opinion (Saier *v.* Joy, 164 N. W. 507), concludes:

"We do not overlook the contention of the defendants that the writ of injunction is not one of right but of grace. It should not issue out of hand, but should issue in cases where the right to such relief is clearly established. Such we find this case to be. We have here a case of the maintenance of a business which, while not a nuisance per se, is such as to these plaintiffs by reason of its location in a strictly residential district—a business which will cause depression to the normal person, lowering his vitality, rendering him more susceptible to disease, and depriving his home of the comfort, repose, and enjoyment to which he is entitled. Coupled with this is the substantial financial loss, due to the depreciation in the value of his property, and the strong probability that added to the other discomforts he will be called upon to suffer will be noxious odors during the summer months. Such a case appeals to the conscience and discretion of the court, and calls for injunctive relief."

Principal and Surety—Liability of Surety—Illegal Contract.—In Basnight *v.* American Mfg. Co., in the Supreme Court of North Carolina (October, 1917, 93 S. E. 734), it was held that where a manufacturing company made with the proprietor of a drug store a contract to increase the store's business which was violative of a statute against lotteries and gift enterprises, the manufacturing company's surety was not liable to the proprietor of the drug store for the manufacturing company's breach of the illegal contract on the ground that the proprietor of the store having been induced to part with his money by reason of the surety's indorsement the latter was